

IN THE MATTER OF LICENSE NO. 343908 MERCHANT MARINER'S DOCUMENT
AND ALL OTHER SEAMAN'S DOCUMENTS
Issued to: William W. WILLIAMS

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1711

William W. WILLIAMS

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 1 May 1967, an Examiner of the United States Coast Guard at New Orleans, La., suspended Appellant's seaman's documents for three months outright plus three months on twelve months' probation upon finding him guilty of misconduct. The specification found proved alleges that while serving as a third mate on board the United States SS CRISTOBAL under authority of the document and license above described, on or about 1 March 1967, Appellant wrongfully and illegally had in his possession an item of ship's cargo, to wit, a Smith-Corona portable electric typewriter, with the intent to deprive the owner of the property therein, when the vessel was at Cristobal, C. Z.

At the hearing, Appellant was represented by professional counsel. Appellant entered a plea of not guilty to the charge and specification.

the Investigating Officer introduced in evidence the testimony of several witnesses and certain voyage records of CRISTOBAL.

In defense, Appellant offered in evidence his own testimony, that of several character witnesses, and commendatory written statements, made over a period of years, of twenty four people.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and specification had been proved. The Examiner then entered an order suspending all documents issued to Appellant for a period of three months outright plus three months on twelve months' probation.

The entire decision was served on 3 May 1967. Appeal was timely filed on 9 May 1967, and perfected on 11 December 1967.

FINDINGS OF FACT

On 1 March 1967, Appellant was serving as a third mate on board the United States SS CRISTOBAL and acting under authority of his license and document while the ship was in the port of Cristobal, C. Z.

At about 1900 on that date, the chief mate of the vessel happened to be working in the "fire control" room, just off the bridge. He saw a box partially concealed behind a radio transmitter. The box proved to contain a brand new Smith-Corona portable electric typewriter, still secured for shipping.

The chief mate took the case to the master and made inquiries. Since the master had no knowledge of the typewriter or a reason for its appearance in the fire control room, the chief mate announced his intention of investigating the matter of its ownership in the morning. He took the typewriter to his own room and put it on the deck.

Late that night, Appellant had occasion to go to the chief mate's room where he saw the case on the deck the next morning. At about 0730, Appellant again went to the chief mate's room and asked for "my" typewriter. Appellant, in reply to a question, stated that he had bought the typewriter in New Orleans shortly before the voyage began, and that he had taken it to the fire control room in the belief that no cargo was to have been worked that night and that he would have been able to write some letters.

The chief mate gave Appellant the typewriter, but, because the cargo for the voyage had included typewriters, and because he had heard the second mate advise Appellant the day before that cargo would be worked that night, he reported his suspicions to the master.

He then returned to Appellant's room and asked Appellant whether he had a "receipt" for the typewriter.

When Appellant questioned his reason for wanting to know, the chief mate mentioned that there was a question because there had been typewriters in the cargo, and because it might be difficult to land a new typewriter at New Orleans without proof of purchase. Appellant stated that he would obtain a receipt from his dealer on return to New Orleans.

It was then ascertained from the serial number, which the chief mate had copied, that the typewriter was ship's cargo. Appellant was summoned before the master and advised that the property which he had claimed was his was in fact cargo. Appellant stated that he had taken the typewriter ashore and given it away to a dealer. The master immediately suggested that he and Appellant

go tot he dealer and repossess the Government property.

Appellant then asked what might happen if the typewriter suddenly "turned up." The master replied that he could make no promises. Appellant left the room and returned within a minute or two with the typewriter.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that Appellant had lawful possession of the typewriter and that he had no intent to deprive the owner of his property.

It is also urged that the order is too severe.

OPINION

I

Appellant's argument that he was lawfully in possession of the typewriter is predicated upon the fact that it was turned over to him voluntarily by the chief mate. He points out that from the time the chief mate found the case until the following morning, Appellant was not in possession of the property; the chief mate was.

"Subsequently, the chief mate testified that he, the chief mate, delivered the typewriter over to William Wert Williams (P. 35). This delivery of the typewriter by the chief mate was made voluntarily. After this delivery, the chief mate knew where the typewriter was or at least knew that Mr. Williams would know where the typewriter was. Since Williams was put in possession of the typewriter by the chief mate and allowed to remain in possession with consent of the chief mate, we submit that William Wert Williams could not be wrongfully and illegally in possession of this item in question."

This argument omits several important points.

The first is that the chief mate turned the typewriter over to Appellant only upon Appellant's claim that it belonged to him. It must be recalled that the true identity of the property had not yet been ascertained, and one of the reasons the chief mate had it in his room was to make inquiries on the morning of 2 March so that proper delivery could be made to the person entitled to it. Thus, it cannot be said that the chief mate knowingly consented to possession of ship's cargo by Appellant.

A second point is that Appellant admittedly had possession of the typewriter before the chief mate found it. Here there is some confusion in the record, understandably enough in view of the series of admitted untruths uttered by Appellant. But great stress was placed, in the presentation of evidence on the fact that Appellant had the cargo watch from 1600, 1 March, to midnight.

Appellant himself claims to have been on watch when he came into possession of the typewriter, but he is also sure that it was on the day of arrival at Cristobal and that it was at about 2230 that night. Arrival at Cristobal was on 28 February. If Appellant "found" the typewriter at about 2230 on 28 February, it was in a place of semi-concealment in the fire control room for almost a whole day before the chief mate saw it. If Appellant "found" the typewriter while on watch on 1 March, it was in the fire control room for less than three hours. None the less, it had been in Appellant's possession.

II

As to his intent with respect to the typewriter, Appellant points out that the ownership of the typewriter was unknown when the chief mate found it. Therefore, the brief says:

"Since the owner of the typewriter was unknown, we submit that Mr. Williams could not have had the intent to deprive anyone of possession of the typewriter, because the ownership of the typewriter, at this time, was unknown to everyone."

"Subsequently, when the typewriter was discovered to be part of the cargo, the evidence clearly indicates that Mr. Williams voluntarily presented that typewriter to the proper parties."

The first claim here is irrelevant. When Appellant made his demand for the typewriter upon the chief mate, Appellant knew that the typewriter was not his. While the Examiner quite justifiably found Appellant's testimony not worthy of credence, it may be assumed for the moment that Appellant thought that the property might have been left behind by a passenger. Upon direct examination he testified that he told the chief mate that he bought the item in New Orleans, and said, "you can't very well walk into a Chief Officer and say, "Well, I found a typewriter, finder keepers." It is a reasonable inference from this that if no passenger claimed to have lost a typewriter, or even if one did and was told that done had been found (because none had been reported), Appellant would have considered himself successful.

The fact was then that he knew that the chief mate had a better right to the typewriter than he did. His claim was made to deny the chief mates possession.

The second statement in the brief is flatly contradicted by the record. Appellant claimed at the hearing that he first knew that the typewriter was cargo when the chief mate questioned him about a "receipt". This statement is not persuasive, because the chief mate did not say it was cargo, but similar to cargo. However, what did Appellant do? He did not "voluntarily present the typewriter to the proper parties." If he were to be believed he took the typewriter to the "game deck" and placed it in a section in the after end of the stack where, he hoped, it would be found by someone else and "returned to its rightful owner without involving me." R-108. Later, when Appellant was called before the master and was directly accused of having cargo in his possession, he did not voluntarily present the typewriter to the master. Instead he told an story that he had taken it ashore and disposed of it. The ultimate production of the property was not a voluntary act.

III

Unexplained possession of recently stolen property justifies a finding that the possessor is the thief. While the word "steal" does not appear in the specification the rule is applicable to this case. *Gilbert v U. S.*, CA D.C. (1954), 215 F. 2nd 334; *Manning v U. S.*, CA 10 (1954), 215 F. 2nd 945; and other authorities too numerous to mention.

When has been said thus far is enough, without going into lengthy analysis of Appellant's testimony, to show that the Examiner was completely justified in rejecting Appellant's implausible explanations.

IV

Appellant has pointed out that the Table of Average Orders, 46 CFR 137.20-165, list a three month suspension for illegal possession of cargo, and complains that the Examiner has gone beyond this.

Examiners are not bound by the Table, and this is not an "average" case. The pattern of deceit and untruthfulness running through this case could well have induced an order even more severe than that given.

CONCLUSION

The findings are based on substantial evidence, and the order is not inappropriate.

ORDER

The order of the Examiner dated at New Orleans, La., on 1 May 1967, is AFFIRMED.

W. J. SMITH
Admiral, U. S. Coast Guard
Commandant

Signed at Washington, D. C. this 29th day of May 1968.

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